

RESOLUTION NO. 10-36

RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK AUTHORIZING AN AMENDED AND RESTATED LOAN AGREEMENT AND AN AMENDED AND RESTATED INDENTURE AND THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE DELIVERY OF AN ALTERNATIVE LETTER OF CREDIT; ADDITION OF A CONFIRMING LETTER OF CREDIT; ADDITION OF A MONTHLY RATE PERIOD AND THE REMARKETING AND TAX REISSUANCE WITH RESPECT TO THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK VARIABLE RATE REVENUE BONDS, SERIES 2008 (SAN FRANCISCO BALLET ASSOCIATION)

WHEREAS, the California Infrastructure and Economic Development Bank (the “Issuer”) was established pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act (California Government Code Section 63000 and following) (the “Act”), for the purpose of promoting economic development; and

WHEREAS, the Issuer is authorized to issue tax-exempt revenue bonds to provide financing for economic development facilities (as defined in the Act) located in the State of California; and

WHEREAS, on August 1, 2008, the Issuer issued its Variable Rate Revenue Bonds, Series 2008 (San Francisco Ballet Association) (the “2008 Bonds”) in an aggregate principal amount of \$44,900,000, pursuant to an Indenture, dated as of August 1, 2008 (the “Original Indenture”), between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”) and loaned the proceeds of such 2008 Bonds to San Francisco Ballet Association, a California nonprofit public benefit corporation (the “Borrower”), pursuant to a Loan Agreement, dated as of August 1, 2008 (the “Original Loan Agreement”), between the Borrower and the Issuer, for the purpose of effecting the retirement of bonds previously issued by the Bank to finance and refinance (in part through either effecting the retirement of or funding other bonds previously issued by the Bank) costs of the acquisition, construction, furnishing and equipping of certain cultural facilities all of which are located in the City and County of San Francisco and are owned or used by the Borrower, and certain costs of issuance in connection therewith; and

WHEREAS, Borrower has submitted an application to the Bank for the issuance of bonds to effect the retirement of a portion of the 2008 Bonds in the aggregate principal amount of not to exceed \$30,000,000, and to leave outstanding the principal amount of the 2008 Bonds which Borrower has represented are attributable to the refinancing of the construction, furnishing and/or equipping of the Borrower’s student dormitories in the amount of approximately \$4,500,000; and

WHEREAS, upon any approval and subsequent issuance of bonds by the Issuer to effect the retirement of a portion of the 2008 Bonds, the amount of the 2008 Bonds subject to the purpose of this resolution shall be those that remain outstanding following the application of the proceeds of such bonds issued for the purpose of retiring a portion of the 2008 Bonds (“Outstanding 2008 Bonds”); and

WHEREAS, principal and interest payments with respect to the 2008 Bonds is currently secured by a letter of credit (the “Current Credit Facility”) provided by Allied Irish Bank, p.l.c., acting through its New York Branch (the “Current Credit Provider”); and

WHEREAS, the Borrower desires to provide an Alternate Letter of Credit (as defined in the Original Indenture) for the Current Credit Facility with respect to the Outstanding 2008 Bonds, consisting of both a letter of credit to be issued by First Republic Bank and an irrevocable standby letter of credit confirmation (the “Confirming Letter of Credit” and, together with the letter of credit to be issued by First Republic Bank, collectively referred to herein as the “New Credit Facility”) to be issued by the Federal Home Loan Bank of San Francisco (together with First Republic Bank, the “New Credit Providers”); and

WHEREAS, the Borrower has requested the addition of a monthly interest rate period (“Monthly Rate Period”) for the Outstanding 2008 Bonds and that the Outstanding 2008 Bonds be adjusted to bear interest at the newly established monthly interest rate effective on the date the Outstanding 2008 Bonds are subject to mandatory tender for purchase in connection with the substitution of the New Credit Facility for the Current Credit Facility (the “Replacement Date”); and

WHEREAS, the Borrower has requested that the Issuer and the Trustee amend and restate the Original Indenture and the Original Loan Agreement to provide for amendments relating to (1) the addition of the Monthly Rate Period, and (2) provisions relating to the provision of the Confirming Letter of Credit as a component of the New Credit Facility; and

WHEREAS, Section 12.01(e)(A) of the Original Indenture, provides that the Issuer and the Trustee may enter into amendments of the type contemplated herein to the Original Indenture and the Original Loan Agreement, without the consent of any Bondholders, but with the prior written consent of the Borrower and the Current Credit Provider (the “Indenture Amendment Consents”), if the effective date of the amendments is a date on which all of the Outstanding 2008 Bonds are subject to mandatory tender for purchase; and

WHEREAS, Section 34 of the Original Loan Agreement, provides that amendments to the Original Loan Agreement are effective only with the written consent of the Trustee and the Current Credit Provider (the “Loan Agreement Consents”); and

WHEREAS, amendments to the Original Indenture and the Original Loan Agreement may become effective only following the mandatory tender of the Outstanding 2008 Bonds which the Borrower has represented will be on the Replacement Date, when the Indenture Amendment Consents and the Loan Agreement Consents are on file with the Trustee; and

WHEREAS, pursuant to Section 39 of the Original Loan Agreement the Borrower may provide an Alternate Letter of Credit so long as certain prior notices, opinions and ratings information are delivered (“Substitution Requirements”); and

WHEREAS, the Borrower had represented that the Substitution Requirements are expected to be met on or prior to the Replacement Date; and

WHEREAS, the amendments of the Original Indenture and Original Loan Agreement and the remarketing of the Outstanding 2008 Bonds in the Monthly Rate Period creates a substantial change in the terms of the Outstanding 2008 Bonds, which change causes the Outstanding 2008 Bonds to be treated as a new issue for tax purposes and will require a new tax certificate and agreement to be entered into between the Borrower and the Issuer; and

WHEREAS, there is now on file with the Secretary of the Board of Directors (the “Secretary”) the following:

- 1) A proposed form of an amended and restated indenture, to be entered into between the Issuer and the Trustee;
- 2) A proposed form of an amended and restated loan agreement, to be entered into between the Issuer and the Borrower; and
- 3) A proposed form of a tax certificate and agreement.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the California Infrastructure and Economic Development Bank, as follows:

Section 1. The above recitals are true and correct.

Section 2. The proposed form of amended and restated indenture on file with the Secretary of the Board (the “Secretary”) is hereby approved, and the Chair of the Board of Directors, the Chair’s designee, or the Executive Director of the Issuer (the “Executive Director”), each acting alone, is hereby authorized and directed, for and on behalf and in the name of the Issuer, to execute and deliver an amended and restated indenture to the Trustee in substantially said form, with such changes and insertions therein as may be necessary or appropriate to cause the same to carry out the intent of this resolution and as the officer or official executing the same, with the advice of the Issuer’s counsel, may require or approve, such requirement or approval to be conclusively evidenced by the delivery thereof (as so executed, the “Amended and Restated Indenture”). The Secretary is authorized to attest to the Issuer’s execution of the Amended and Restated Indenture.

Section 3. The proposed form of the amended and restated loan agreement on file with the Secretary is hereby approved, and the Chair of the Board of Directors, the Chair’s designee, or the Executive Director, each acting alone, is hereby authorized and directed, for and on behalf and in the name of the Issuer, to execute and deliver an amended and restated loan agreement in substantially said form, with such changes and insertions therein as may be necessary or appropriate to cause the same to carry out the intent of this resolution and as the officer or official executing the same, with the advice of the Issuer’s counsel, may require or

approve, such requirement or approval to be conclusively evidenced by the delivery thereof (as so executed, the “Amended and Restated Loan Agreement”). The Secretary is authorized to attest to the Issuer’s execution of the Amended and Restated Loan Agreement.

Section 4. The proposed form of the tax certificate and agreement on file with the Secretary is hereby approved, and the Chair of the Board of Directors, the Chair’s designee, or the Executive Director, each acting alone, is hereby authorized and directed, for and on behalf and in the name of the Issuer, to execute and deliver a tax certificate and agreement in substantially said form, with such changes and insertions therein as may be necessary or appropriate to cause the same to carry out the intent of this resolution and as the officer or official executing the same, with the advice of the Issuer’s counsel, may require or approve, such requirement or approval to be conclusively evidenced by the delivery thereof.

Section 5. The Executive Director, the Chair of the Board of Directors, or the Chair’s designee, each acting alone, is hereby authorized and directed, for and in the name and on behalf of the Issuer, to execute replacement bonds in an aggregate principal amount not to exceed the amount of Outstanding 2008 Bonds in accordance with the terms of this resolution and the Amended and Restated Indenture and in the form set forth in the Amended and Restated Indenture. The replacement bonds, when so executed, shall be delivered to the Trustee for authentication by the Trustee. The Trustee is hereby requested and directed to authenticate and register the replacement bonds so delivered by executing the appropriate certificate of authentication and registration appearing thereon, and to deliver the new bonds, when duly executed, authenticated and registered.

Section 6. The Chair of the Board of Directors, the Chair’s designee or the Executive Director, each acting alone, is hereby authorized to execute all certificates and instruments (including without limitation letters of representations, certifications of authority and tax forms required by the Internal Revenue Service in connection with the reissuance of the Outstanding 2008 Bonds) which they or counsel to the Issuer may deem necessary or advisable to effectuate the purpose of this resolution.

Section 7. The signatures of the Issuer to the Amended and Restated Indenture and Amended and Restated Loan Agreement authorized by this resolution shall not be deemed effective until the Loan Agreement Consents, Indenture Amendment Consents and Substitution Requirements have been received by the Trustee.

Section 8. All actions heretofore taken by the officers, employees and agents of the Issuer with respect to the actions contemplated by this resolution are hereby approved, confirmed and ratified. The officers of the Issuer and their authorized designees, deputies, agents and counsel are hereby authorized and directed, jointly and severally, to perform their duties and to execute and deliver any and all certificates which they or counsel to the Issuer, may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 9. This resolution shall take effect immediately upon its passage.

PASSED, APPROVED, AND ADOPTED at a meeting of the California Infrastructure and Economic Development Bank on December 14, 2010, by the following vote:

AYES: Berte, Bryant, Lujano, Leonard

NOES: None

ABSENT: Rice

ABSTAIN: None

By Stanton C. Hazelroth
Stanton C. Hazelroth, Executive Director

Attest:

By Roma Cristia-Plant
Roma Cristia-Plant,
Secretary of the Board of Directors